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THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

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**LEE A. HOLLAAR, an individual;  
AUDREY M. HOLLAAR, an individual,**

**Plaintiffs,**

**v.**

**MARKETPRO SOUTH, a Maryland  
corporation,**

**Defendant.**

**MEMORANDUM DECISION  
AND ORDER**

**Case No. 2:22-cv-00559-TS-JCB**

**District Judge Ted Stewart**

**Magistrate Judge Jared C. Bennett**

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District Judge Ted Stewart referred this case to Magistrate Judge Jared C. Bennett under [28 U.S.C. § 636\(b\)\(1\)\(A\)](#).<sup>1</sup> Before the court are: (1) Defendant MarketPro South's ("MarketPro") Motion for Writ of Execution;<sup>2</sup> (2) MarketPro's Ex Parte Motion for Hearing to Identify Judgment Debtors' Property;<sup>3</sup> and (3) Plaintiffs Audrey M. Hollaar and Lee A. Hollaar's ("Plaintiffs") Motion for Stay of Enforcement of Judgment Pending Appeal and for Deposit of Judgment into Court.<sup>4</sup> The parties have agreed that enforcement of the judgment may be stayed so long as Plaintiffs deposit \$38,551.26 with the Clerk of Court as security to all parties pending resolution of the appeal.<sup>5</sup> Therefore, the court grants Plaintiffs' Motion for Stay of Enforcement

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<sup>1</sup> ECF No. 41.

<sup>2</sup> [ECF No. 36](#).

<sup>3</sup> [ECF No. 37](#).

<sup>4</sup> [ECF No. 38](#).

<sup>5</sup> [ECF No. 43 at 2](#); [ECF No. 44 at 2](#).

of Judgment Pending Appeal and for Deposit of Judgment into Court. Consequently, the court denies as moot MarketPro's Motion for Writ of Execution and Motion for Hearing.

#### **BACKGROUND**

In January 2023, the court entered a Memorandum Decision and Order dismissing Plaintiffs' claims against MarketPro,<sup>6</sup> and subsequently awarded MarketPro \$32,366.10 in attorney fees and costs.<sup>7</sup> Plaintiffs appealed the adverse ruling against them to the Tenth Circuit Court of Appeals.<sup>8</sup> While the appeal was pending, MarketPro moved the court for a Writ of Execution<sup>9</sup> and a hearing to identify property to satisfy the judgment.<sup>10</sup> Plaintiffs then moved for stay of enforcement of the judgment pending appeal under [Fed. R. Civ. P. 62\(b\)](#).<sup>11</sup> As security for the stay, Plaintiffs offered to deposit the judgment amount of \$32,366.10 with the Clerk of the Court.<sup>12</sup> MarketPro agreed that a stay of execution of the judgment would be acceptable if Plaintiffs deposited \$38,551.26 with the Clerk of the Court as security during the appeal. Plaintiffs agreed to do so.

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<sup>6</sup> [ECF No. 26](#).

<sup>7</sup> [ECF No. 35](#).

<sup>8</sup> [ECF No. 30](#).

<sup>9</sup> [ECF No. 36](#).

<sup>10</sup> [ECF No. 37](#).

<sup>11</sup> [ECF No. 38](#).

<sup>12</sup> [ECF No. 38 at 2](#).

### ANALYSIS

Under Fed. R. Civ. P. 62(b), a party may obtain a stay of execution by providing a bond or other security. Fed. R. Civ. P. 67 allows a party to deposit this security with the court.<sup>13</sup> According to Fed. R. Civ. P. 69(a)(1), “[t]he procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located.” In Utah, “the presumptive amount of a bond or other security for compensatory damages is the amount of the compensatory damages plus costs and attorney fees; as applicable, plus 3 years of interest at the applicable interest rate.”<sup>14</sup>

The current post-judgment interest rate is 6.73%.<sup>15</sup> Three years of post-judgment interest on the \$32,366.10 judgment calculated at the current rate totals \$6,185.16. Accordingly, MarketPro correctly asserts and Plaintiffs agree that they should deposit \$38,551.26 with the Clerk of Court in order to secure MarketPro’s right to interest accrued on the judgment during pendency of the appeal.<sup>16</sup>

The court concludes that the amount of Plaintiffs’ deposit does not alter the amount of the judgment. In other words, if MarketPro prevails on appeal and the deposit is released to MarketPro upon MarketPro’s motion, MarketPro will only be awarded the actual amount of interest accrued through that date, and the remainder will be refunded to Plaintiffs. If Plaintiffs prevail on appeal, the funds can be released to Plaintiffs upon motion. The court concludes that

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<sup>13</sup> Fed. R. Civ. P. 67(a).

<sup>14</sup> Utah R. Civ. P. 62(h)(2)(A).

<sup>15</sup> Utah Code § 15-1-4; Post Judgment Interest Rates, Utah Courts, <https://legacy.utcourts.gov/resources/intrates/interestrates.htm> (last visited July 12, 2023).

<sup>16</sup> ECF No. 42 at 3; ECF No. 44 at 2.

Plaintiffs' deposit of \$38,551.26 with the Clerk of Court (amount of judgment, plus post-judgment interest) will provide adequate security to all parties pending resolution of the appeal. Therefore, the court grants Plaintiff's Motion for Stay of Enforcement of Judgment Pending Appeal and for Deposit of Judgment into Court.

#### CONCLUSION AND ORDER

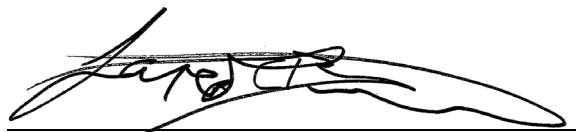
Based upon the foregoing analysis, IT IS HEREBY ORDERED:

1. Plaintiff's Motion for Stay of Enforcement of Judgment Pending Appeal and for Deposit of Judgment into Court<sup>17</sup> is GRANTED.
2. Plaintiff must deposit \$38,551.26 with the Clerk of Court as security under [Fed. R. Civ. P. 62\(b\)](#) and [Fed. R. Civ. P. 67](#) by August 9, 2023.
3. MarketPro's Motion for Writ of Execution<sup>18</sup> and Ex Parte Motion for Hearing to Identify Judgment Debtors' Property<sup>19</sup> are DENIED AS MOOT.

IT IS SO ORDERED.

DATED this 12th day of July 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Jared C. Bennett', is written over a horizontal line.

JARED C. BENNETT  
United States Magistrate Judge

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<sup>17</sup> [ECF No. 38](#).

<sup>18</sup> [ECF No. 36](#).

<sup>19</sup> [ECF No. 37](#).